

PROJECT NAME: _____
PROJECT NO.: _____

CITY COUNCIL APPROVAL
DATE: _____

19

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
SOUTHERN CALIFORNIA RISK MANAGEMENT ASSOCIATES, INC.**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and Southern California Risk Management Associates, Inc. (SCRMA) ("Consultant") as of November 1, 2005.

AGREEMENT

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on June 30, 2008, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

Section 2. COMPENSATION/FEE SCHEDULE City hereby agrees to pay Consultant in accordance with Exhibit B for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set

forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- The Consultant's signature.

- 2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

- 2.3 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

- 2.4 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.
- 2.5 **Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B, and shall not exceed the amounts shown on Exhibit B. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.
- 2.6 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.
- 2.7 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.
- 2.8 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required

by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.2 **Commercial General and Automobile Liability Insurance.**

- 4.2.1 **General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

- 4.2.2 **Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability.

Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3 Professional Liability Insurance. If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed \$150,000 per claim.

- 4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- 4.3.3 The policy must contain a cross liability clause.
- 4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:
- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.
 - c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
 - d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 **Requirements for All Policies.**

- 4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.
- 4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
- 4.4.3 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

4.4.5 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

4.6 Waiver. The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions

of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 Consultant No Agent. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City or Consultant may terminate this Agreement without cause upon thirty (30) days written notification to the other party.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City

any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:
- 8.6.1 Immediate cancellation of the Agreement;
 - 8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and
 - 8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.

- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Carmen Valdez who is authorized to act for, and on behalf of City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.** Any written notice to Consultant shall be sent to:
- Ken Alston, Chairman
560 South Winchester Blvd., Suite 500
San Jose, CA 95128
- Any written notice to City shall be sent to:
- Carmen Valdez, Acting Human Resources Director
455 East Calaveras Boulevard
Milpitas, California 95035
- 10.11 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 **Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

CONSULTANT

Charles Lawson, Interim City Manager

Ken Alston, Chairman

ATTEST:

Mary Lavelle, City Clerk

33-0267372
Taxpayer Identification Number

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

APPROVED AS TO CONTENT:

Carmen C. Valdez, Acting Human Resources Director

APPROVED:

Finance Director/Risk Manager

Exhibit A: Scope of Services

1. Claim File Set-Up and Diary Review

Initial Claims Processing: All 5020's and DWC-1's that constitute first notice of an injury to SCRMA from a client are reviewed and evaluated within one working day of receipt by the claims examiner where an initial decision is made as to whether or not the file should be an indemnity file, a precautionary indemnity file, or a medical-only file. The claims assistant works very closely with the claims examiner in implementing the initial investigation which involves calls to the client, the reported medical facility, and the injured worker where appropriate. It should be noted that often SCRMA receives notice of an injury prior to receipt of a 5020 or a DWC-1. In this case, the same investigative procedure is initiated within one day of notice, and SCRMA takes the additional step to determine if we need to provide a DWC-1 directly to the injured employee from our office.

Diary: SCRMA maintains a diary system through the computer software program on the claims files. It is our firm belief that the diary system is a tool when used effectively to assist the claims examiner, and a tool to supervisors to effectively manage and communicate on a caseload. The key to an effective diary system is allowing the claims examiner, claims assistant and account manager to manage and control the diary, as opposed to allowing the diary to manage and control the users of the diary. Diary systems are established according to the activity that is needed on a particular claim. Multiple diaries are established by benefit technicians, claims assistants, claims examiners and account managers on files that require such activity. Since examiners work their mail on a daily basis and do not drop-file it, the active claims are monitored continuously.

2. Employee Contact

Within 24 hours of receipt of notice of injury, whether it be from the employer or another source, in those cases involving ongoing temporary disability or unique issues, SCRMA will contact the injured employee by telephone and complete a preliminary investigation, which includes contact with the employer and doctor. Should SCRMA learn that a DWC-1 Form had not been given to the injured employee, SCRMA will immediately send the DWC-1 Form directly to the injured employee. Additionally, at times, depending on the nature of the injury and the ancillary issues involved, SCRMA may request a face-to-face meeting with that injured employee at the onset of the injury. However, we emphasize that every claim is treated individually and there are some claims where direct contact by SCRMA is not warranted and would be considered "overkill." However, those cases are the exception and would be discussed directly with The City of Milpitas as to whether or not direct contact with the employee following the injury would not be warranted.

Furthermore, not only will SCRMA make initial and immediate contact with the employee where warranted, but we will emphasize continuing telephone contact with the employee during the life of the claim. All calls from employees will be returned within 24 hours. Have you seen the various forms that an employee receives in connection with the qualified medical evaluation? A well-timed phone call or face-to-face meeting with an injured employee prior to the receipt of certain types of benefit notification can mitigate employee confusion and misunderstanding which strains employer/employee relations and could cause unnecessary litigation.

3. Employer Contact.

SCRMA insists on contact with the City of Milpitas regarding claims status. In fact, we would be unable to administer claims for the City of Milpitas without direct contact. During the initial stages of a claim involving lost time, ongoing biweekly contact is made with an individual at the City of Milpitas to verify and coordinate the use of the benefits and to update the City of Milpitas on anticipated return-to-work dates or potential return-to-modified dates. However, we emphasize that there is not a formal procedure or structure with any of our clients regarding contact on claims status. We insist on at least quarterly face to face meetings regarding claims status. However, we find with most of our clients continual updates via phone conversations or access to our computer become an expectation and normal course of adjusting files. SCRMA's philosophy is that these claims and the decisions made on these claims ultimately rest with City of Milpitas. Therefore, the City of Milpitas's involvement is necessary and a key component of claims adjusting.

SCRMA typically insists on at least a quarterly "formal" client file review. However, it must be emphasized that the purpose of these client file reviews is not to review every open file in the client's program. We feel this would be a substantial waste of both the City of Milpitas's and SCRMA's valuable time that could be spent contacting injured workers or bringing claims to a reasonable resolution. Rather, these face-to-face meetings are used to strategize and build a plan of action on cases that are nearing a settlement disposition or are at the onset identified as a delayed claim needing input from the City of Milpitas's personnel. This does not mean that a medical-only file will not be included in a file review. At SCRMA, we often find that some of the medical-only files require discussion at these face-to-face file reviews. Finally, just because we insist on a minimum of quarterly reviews, which does not mean that a face-to-face meeting cannot be scheduled simply on one issue or one file. We try to customize and answer to the needs of the client in regard to client file reviews.

4. Caseloads

In order to assure that our claims personnel have adequate time to address the complicated issues in workers' compensation claims adjusting, and to ensure that

they have adequate time to communicate issues to all parties, we maintain our caseloads at no greater than 175 active open indemnity files. The Department of Self-Insurance Plans recommends an active indemnity caseload of 200. As of March 31, 2005, our claims examiners averaged 141 open claims per examiner.

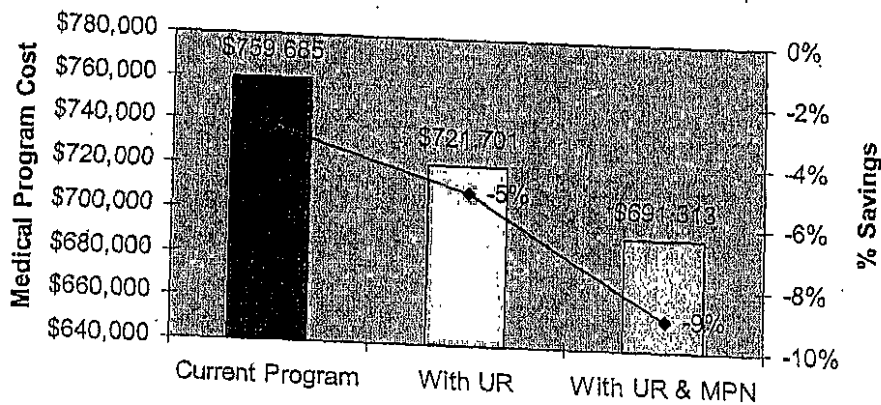
The account manager supervising the unit does not maintain an active caseload.

5. Analysis of Current Claims and Future Prevention

Based on the City's "Consolidated Liabilities" report from 2003-2004, which was included in the RFP, our analysis is as follows:

- The City has a stable program, which is reflected in the year-over-year indemnity and medical payments.
- SCRMA strongly believes, however, that our in-house utilization review program will decrease the City's over all cost of risk by reducing unnecessary medical activity of future medical claims. Based on the City's provided report, which reflected \$759,685 in medical paid, we estimate that our UR program would reduce this by \$37,984.25 or 5%.
- Our medical provider network (described in detail within) will generate hard savings of approximately \$30,387.40 in the first year or 4%.
- These assumptions and illustrative savings are based on an integrated program where the claims examiner and account manager work closely with our in-house UR coordinator and the medical provider administrator.

Illustrative Savings



6. Plan of Action

A plan of action (POA) is established at the claim's initial set-up and updated based on new medical, legal or factual information at which time reserves are adjusted. Please refer to the Appendix, Section C, for a sample of our "Reserve/Diary Review Notepad template."

7. Reporting and Forms

(Please see Appendix E for a list of our sample reports.)

SCRMA prides itself on meaningful and accurate reports. Various reports are prepared on a monthly, quarterly, and annual basis. The cost of these reports is incorporated into our annual claims administration fee.

1. Claims Costs Detail
2. Location Summary by Year
3. Customized Trend Analysis
4. Claims Summary by Year
5. Check Register
6. Annual Review
7. Excess Year by Description
8. Injury Year Detail
9. Frequency Summary (by Body Part)
10. Medical Cost Savings Report
11. Vendor Payment by Claim
12. Vendor Payment Summary
13. Workers' Compensation Frequency and Severity Report
14. OSHA Log
15. Annual Report for the City of Milpitas

Sample reporting kits, which include posters, letters, pamphlets and forms that can be provided to the City of Milpitas and/or injured employees, can be found in the attachments to the proposal entitled "Workers' Compensation Reporting Kit." Forms are also available at our website, scrma.com.

8. Reserves

Reserves are set on an individual case basis, taking into consideration the validity of the physician's Whole Person Impairment (WPI) rating, the age and occupation of the injured employee, together with the length of temporary disability, options for return to modified duty, nature and length of medical treatment, and a potential for rateable permanent disability. At any point in time, our reserves (both on an individual claims basis and in aggregate) give the City of Milpitas an accurate financial snapshot of future liability.

The method by which claims reserves are analyzed, as well as the frequency and supervisory element, can best be demonstrated by a review of our "Mandatory Minimum Account Manager Activity (MMAMA)" checklist in the Appendix, Section C, and our "Reserve/Diary Review Notepad Template" and "Reserve Worksheet" in the Appendix, Section C. Authority levels are flexible according to client requirements.

9. Data Conversion

As recent as 2004, we converted data from the City's current TPA into our system. Examples include the cities of Paso Robles, Pismo Beach, and San Luis Obispo.

10. Claims Reporting

SCRMA's Claim Processing System, Renaissance, designed and licensed by the David Corporation, is maintained and supported by dedicated staff in SCRMA's Upland office. Renaissance is a Windows-based system. All claims and financial data is backed up on a daily basis and stored at two separate off-site locations on digital linear tapes. Credentials are required to access any of the data in the claims system. Credentials are assigned to a user required to access the system. Different areas in the system have different access rights that are controlled by roles. Roles for any particular user are granted on a need-to-have only basis.

The coding specific to claims files in SCRMA's computer system will be to the specifications required by the City while concurrently ensuring regulatory compliance for state-mandated coding and reporting. We understand that SCRMA is collecting and storing data for the client's future risk management and actuarial reports. Therefore, we maintain accurate, up-to-date demographic data on the injured workers and claims statistical data within the computer system.

The Renaissance Claim Processing System enables SCRMA to provide SCRMA's claims technical staff and its clients with a superior claims adjudication software program designed specifically for California workers' compensation that is supported by the strength of Microsoft NT Server and SQL relational databases. Therefore, SCRMA's claims examiners, account managers and SCRMA's clients have the benefit of a superior claims administration/risk management software system with the power to support state of the art processing speed, enhanced functionality and maximum flexibility.

Since SCRMA's workers' compensation claims adjudication program was specifically designed for California workers' compensation claims handling, there are data fields assigned to each individual claim to record and track unique data and events that occur on California workers' compensation claims. Because SCRMA provides claims administration services to insured clients as well as self-insured clients, our Claim Processing System must have the ability to meet the stringent guidelines of the California unit statistical reporting plan in regards to loss type and claim status coding.

Equally important to the capabilities of SCRMA's Claim Processing System regarding coding is SCRMA's technical staff's ability to input the proper data accurately and timely. SCRMA guarantees that the coding specific to claims files

in SCRMA's Claim Processing System will be to the specifications required by the client, while concurrently ensuring regulatory compliance for State-mandated reporting. We understand that SCRMA is collecting and storing the data for the client's future risk management and actuarial reports. Therefore, we will maintain accurate, up-to-date demographic data on the injured workers and claims statistical data within our workers' compensation claims adjudication system.

SCRMA's Claim Processing System has the ability to record, track and report claims payments and claim reserves by category and/or by type. This can be accomplished on a claim specific basis or on an aggregate basis.

SCRMA currently has clients who access their claims data remotely. With a modem and security clearance, remote users can access SCRMA's Claim Processing System directly to report new claims or view a claim status. Additionally, SCRMA has the ability to create an extract of defined data that can be transmitted electronically, so that our clients can integrate the data into compatible software packages and spreadsheets. Please refer to our fee quote for cost of remote access.

With the advent of AB 435 and LC 3762, we are working closely with each of our clients on an individual basis to ensure agreement as to the nature and extent of medical information that can be disclosed so they have access to all online information.

SCRMA is recommending to our clients, as self-insured entities, that they provide SCRMA with the positions they wish to designate as authorized to receive medical information on workers' compensation claims. Those clients who agree to a Confidential Medical Information Disclosure Agreement with SCRMA will have an open sharing of medical information with those designated individuals as existed before the adoption of AB 435. However, those designated employees would be strictly prohibited from sharing the medical information with any other employee within the organization.

11. Record Retention

The data on all files, both open and closed, are retained in the computer system and in hard copy form (paper files). The data in the computer system can be accessed on closed files. SCRMA maintains closed files while the contract is in place. We will maintain closed files up to statutory requirements. In order to maintain a manageable level of closed files, we purge according to statutory regulation and with the client's knowledge and consent. Should the client wish to retain files beyond statutory requirements, they can either be returned or other arrangements made.

12. Claims Supervision

At SCRMA, we do not expect the claims examiner and assistant to adjust claims in a vacuum. Working side by side with the claims examiner is the account manager as well as President, Jody Gray, and Vice Presidents, Angela Hatley and Michael Landa. Both the claims examiner's and the assistant's work product is reviewed by the account manager. Case issues, settlements and overall account issues are round-tabled with not only the account manager but in certain instances also with Jody Gray, Angela Hatley or Michael Landa. SCRMA is able to maintain this added depth and immediate accessibility of claims supervision and management personnel to both the claims examiner and the City of Milpitas by keeping our caseloads to a manageable level as well as our employee to supervisory ratio. In addition, the account manager supervising the unit does not maintain an active caseload.

The account manager review of claims is incorporated into the routine of processing claims. Please refer to our "Mandatory Minimum Account Manager Activity (MMAMA)" checklist in the Appendix, Section C.

13. Examiner Training and Accreditation:

We believe the claims examiner's technical abilities and service philosophies are paramount to a successful workers' compensation program. Each of our employees are scrutinized through oral and written examination conducted by a multi-level management interview team. Employment verification, reference checks and post-offer drug screening are conducted for each employee candidate.

SCRMA has an educational reimbursement program for all technical claims staff which includes medical-only clerks, claims assistants, claims examiners and account managers, as well as educational reimbursement for our Management Information Service Department in their technical field. A résumé detailing the relevant experience and background currently employed by SCRMA can be found in the Appendix, Section B.

In addition to our long-standing standards of experience and education, SCRMA has adopted and will comply with the new 2005 Certification and Standards for claims adjusters set forth in Assembly Bill 1262, California Insurance Code 11761, and California Code of Regulations, Title 10, Section 2592.

SCRMA has implemented a monthly training program for all claims technical staff, which includes account managers, claims examiners and claims assistants. These monthly sessions focus on all areas of workers' compensation and ancillary issues important to the client base that we serve. For example, we have had training workshops focusing on the implications of ADA, workers' compensation case law analysis and updates, rehabilitation updates, and basics on excess insurance. The purpose and emphasis on these monthly training sessions is to expand the base of our knowledge of our claims technical staff beyond basic claims handling.

14. Quality Control/Audits

We believe that a multi-level internal auditing process produces a superior claims product. Working side-by-side with the claims adjustor is the account manager as well as the President, Jody Gray, Vice-President of Claims, Michael Landa, Vice-President of Accounts, Angela Hatley, and Kim Kinney, Claims Manager. Both the claims adjustor's and the assistant's work product is reviewed by the account manager. In-house file reviews or internal claims audits are incorporated into the routine processing of claims. These internal audit procedures include, but are not limited to, round-table discussion between the claims adjustor, account manager, claims manager and the employer representatives. Our management team created and implemented an internal audit guideline entitled Mandatory Minimum Account Manager Activity (MMAMA). Please refer to the MMAMA's checklist within the Appendix.

Claims status reports can be provided to the City in a number of different media. While we recommend quarterly file reviews, regular ongoing communication with the City is accomplished telephonically, electronically or in written format. The City may choose to remotely access in a view-only format, claims system notepads, diary and payments for each of their claims.

15. Staff: The qualifications and minimum years of experience for the technical claims staff are as follows:

Account Managers

Completion of the Insurance Educational Association workers' compensation claims administration certificate program which provides training to meet the required classroom curriculum for claim adjusters.

Certification by the Department of Workers' Compensation Self-Insurance Plans to examine self-insured workers' compensation claims as an experienced claim adjuster.

Post-certification training through seminar materials and ongoing educational course work on ancillary issues affecting workers' compensation, i.e., Labor Code 4850, salary continuation programs, presumptive injuries and disability retirement issues, implementation and impact of legislative reform, issues addressing the Americans with Disabilities Act, subrogation, case law updates, and other codes that overlap with workers' compensation and risk management issues.

NOTABLY, OUR ACCOUNT MANAGERS DO NOT MAINTAIN AN ACTIVE CASELOAD.

Claims Examiners

If privileged to serve the City of Milpitas, we will assign senior examiners with caseloads of no more than 175 open indemnity claims. As a heuristic, our claims examiners have the following qualifications:

- Completion of the Insurance Educational Association workers' compensation claims administration certificate program, which provides training to meet the required classroom curriculum for claim adjusters.
- Certification by the Department of Workers' Compensation Self-Insurance Plans to examine self-insured workers' compensation claims as an experienced claim adjuster.

SCRMA has long had in place an educational reimbursement program for all technical claims staff which includes medical-only clerks, claims assistants, claims examiners, and account managers, as well as educational reimbursement for the Management Information Service Department in their technical field. In addition, SCRMA has a pre-certification training program for all claims technical staff which includes account managers, claims examiners and claims assistants. These monthly sessions focus on all areas of workers' compensation and ancillary issues important to the client base that we serve. For example, we have had training workshops focusing on the implications of ADA, Labor Code 4850, salary continuation programs, presumptive injuries and disability retirement issues, workers' compensation case law analyses and updates, legislative reform implementation and updates, and basics on excess insurance. The purpose and emphasis of these monthly training sessions is to expand the knowledge base of our claims technical staff beyond the basic claims training.

In addition to our long-standing standards of experience and education, SCRMA has adopted and will comply with the new 2005 Certification and Standards for claims adjusters set forth in Assembly Bill 1262, California Insurance Code 11761, and California Code of Regulations, Title 10, Section 2592.

Claims Assistants

Working on completion of the Insurance Educational Association workers' compensation claims administration certificate program.

Training and Accreditation: SCRMA has long had in place an educational reimbursement program for all technical claims staff which includes medical-only clerks, claims assistants, claims examiners, and account managers, as well as educational reimbursement for the Management Information Service Department in their technical field. In addition, SCRMA has a pre-certification training program for all claims technical staff which includes account managers, claims examiners and claims assistants. These monthly sessions focus on all areas of workers' compensation and ancillary issues important to the client base that we

serve. For example, we have had training workshops focusing on the implications of ADA, workers' compensation case law analyses and updates, legislative reform implementation and updates, and basics on excess insurance. The purpose and emphasis of these monthly training sessions is to expand the knowledge base of our claims technical staff beyond the basic claims training.

As a recent example of this, over the last several weeks we have expanded our training program to include not only our internal staff, but that of the employer and their medical providers. Several seminars such as "Evidence Based Medicine" and "The Impact of Utilization Review on the Medical Provider" and "The Impact of Utilization Review on Reserving" have been presented. In addition, we have begun training our clients' defense attorneys in preparation for defense of the utilization review process/outcomes and appeals filed before the Workers' Compensation Appeals Board.

In addition to our long-standing standards of experience and education, SCRMA has adopted and will comply with the new 2005 Certification and Standards for claims adjusters set forth in Assembly Bill 1262, California Insurance Code 11761, and California Code of Regulations, Title 10, Section 2592.

The account manager will oversee the account and be available to handle administrative or technical problems. Our account manager supervisory units do not contain an active caseload. All management staff, the account manager and claims examiner assigned to handle the City of Milpitas hold the Department of Workers' Compensation Self-Insurance Plans State certification. Furthermore, a prerequisite of all claims assistants at SCRMA is that they are completing a course of study designed to prepare them for State certification.

16. Employer Training:

SCRMA is a specialist in workers' compensation claims administration in the State of California. We believe an essential role of the third-party administrator is to prepare the employer to address pending legislation or changes in the statutes that affect the administration of the workers' compensation program. This includes not only changes in the Labor Code, but any other governmental legislation that would affect or have an impact on the self-insured workers' compensation program. It is SCRMA's practice to communicate with our clients via memorandum and workshops regarding these statutory amendments and pending legislation.

As an example of this focus, SCRMA was one of the first TPAs or carriers in the state to draft a white paper on SB 899, which was distributed to clients on April 19, 2004. Recently, we were one of the first firms to also draft and distribute a focused analysis on the new permanent disability rating schedules.

SCRMA has found that client education serves as a significant cost control mechanism. We have implemented fiscal year reviews with our clients. We recommend that SCRMA meet annually with all the "managers" for the employer and share with them a presentation that summarizes their costs allocated by department over the past year, as well as some solutions for mitigating problem areas or answers as to why certain departments may be experiencing higher costs. This is a very effective presentation when followed by individual safety committee meetings by department. *A sample of an employer In-Service Presentation can be found in the Appendix, Section D.*

SCRMA's Claim Procedure Manual is created as a work in progress. This means that as issues develop, additions are made to the procedure manual. Therefore, it is an extremely dynamic document and can be voluminous. Should the City of Milpitas request, we would be happy to share the contents of our procedure manual.

17. Medical Management

Medical Bill Auditing

Auditing and re-pricing bills is part of SCRMA and MAAM's coordinated services to provide our clients with the highest quality claims administration and most effective cost containment services. MAAM started its bill review service in 1997 in order to leverage better pricing for our clients over bill review software vendors by aggregating SCRMA clients' bill review needs.

We have learned that no detail of an accepted claim is potentially as time consuming, complicated or possibly perilous as the processing of medical bills. Proper payment for services can only be derived from a coordinated effort of the claims examiner, nurse manager, bill auditing technician, and bill review software vendor. All bills must be checked for relatedness to a compensable condition, appropriateness under general billing practices, as well as compliance with fee schedule values, ground rules and consideration of reasonableness.

Our recommended allowances produced by the bill auditing process reflect the status of each claim, treatment authorizations, medical management efforts, negotiated discounts and channeling of care, relevant statutes and regulations, community billing standards and evidence-based treatment protocols. Bill review reductions must be fully valid so the employer can prevail at the Workers' Compensation Appeals Board (WCAB) in any lien proceedings. We have compiled an impressive record of defending bill pricing and management practices at the WCAB, fighting and winning cases on which most defense representatives would prefer to compromise or concede. Winning at the Board requires the coordinated efforts of employers, examiners, defense attorneys and bill reviewers. As you know, the appeals system is biased in favor of lien claimants — we have learned that only perfect defenses can prevail. Most

importantly, our experience is that MAAM consistently generates greater savings – based on net charges and net savings – over other bill auditing software companies.

Over the last six months, we have generated an average of 56% in net savings for our clients.

Utilization Review

We are uniquely positioned to apply effective utilization review and produce maximum advantage to examiners and employers through coordination of claims staff and utilization review coordinators and examiners. Beyond a medical director, our utilization review program is run completely in-house, making daily coordination with claims adjusters possible.

Our utilization review program replaces the treating physician presumption of correctness with a process centered on evidence-based medical protocols. Every medical procedure must be approved, developing not only a long record of approval letters but detailed notes for the claims file. Approvals take place both prospectively and retrospectively.

At times, our utilization review results in the denial of procedure which are not in accordance with the appropriate medical guideline and therefore presumptively medically unnecessary. This involves not only denials on expensive procedures such as surgeries but also stopping the abuse of unnecessary treatment such as TENS units, gym memberships and spas.

Recently, we have noticed that our utilization review has a sentinel effect. In other words, some providers are not even attempting to get unnecessary procedures and useless treatment approved because they know that our program is monitoring the process. For example, we send out approval letters for every treatment that has been prospectively approved. We strongly believe, and the empirical data proves, that these actions are changing provider's behavior.

Medical Provider Network

Southern California Risk Management ("SCRMA") offers, through its affiliate Medical Audit and Management ("MAAM"), the WellComp™ Medical Provider Network, a network specifically designed for increased employer control and cost containment. WellComp is custom-designed for SCRMA clients.

Created from the ground-up with hand-picked providers, WellComp is designed to complement our claims administration and work in concert with bill review and utilization review to help curb overall workers' compensation costs. WellComp is another tool to provide employers and their claims examiner with greater control of the claims process. The WellComp philosophy is that a fully-integrated

provider program results in improved medical care and better medical outcomes, which in turn results in improved return-to-work results, reduced litigation, and greater employee satisfaction. In short, we believe that the best providers will ultimately help contain workers' compensation costs.

The WellComp Network is comprised of a growing list of over 1,300 carefully-selected medical providers throughout California. We exhaustively analyzed each of these physicians and providers in an effort to create the most effective network for our clients. Instead of casting a wide net, which would defeat the purpose of employer control, we built our network through nominations from defense attorneys, claims examiners, top risk managers, and client referrals. Beyond the quality of medical care, our criteria also includes whether a provider truly understands the impact their decisions and reports have on a claim.

Additionally, as part of our WellComp MPN offering, we have a contract with Kaiser-on-the-Job (KOJ) and Sutter Health, which can be included in your MPN upon request.

Developing the City of Milpitas Medical Provider Network

SCRMA and MAAM anticipate providing the following services to the employees of the City of Milpitas.

Provider Network Access

Proprietary Contracts. MAAM will provide the City of Milpitas with access to medical providers. Our contracts with medical providers, including KOJ and Sutter Health, are specific to the promulgated emergency regulations in accordance with C.C.R. Title 8 Sections 9767.3(d)(8)(C), (D) and (E). A competitive advantage of our MPN contracts is that they are specific to workers' compensation; in our contracts, providers have agreed to abide by certain workers' compensation requirements, including utilization review, continuity of care, continuing education, and reporting requirements.

Customization. The City of Milpitas undoubtedly has critical partnerships with certain medical providers, which risk management will want to nominate for the City of Milpitas's MPN. After undertaking its own diligence and cross checking risk management nominations, MAAM will contract directly with these medical providers for inclusion within the MPN.

Credentialing. MAAM will credential each medical provider participating in the WellComp MPN at a frequency of no less than every two years to verify that each provider is licensed, registered and/or certified by its respective board or agency, if that licensure, registration or certification is required by law.

Data manipulation and administration. MAAM will compile medical provider information and other data required for filing and administration of a validly organized medical provide network pursuant to Labor Code Section 4616 et seq.

Employee notice. MAAM will provide the City of Milpitas with an employee notice as required under and meeting the requirements of C.C.R. Title 8 Section 9767.12 and shall assist City of Milpitas as requested, in (i) the distribution of the employee notice to covered employees and (ii) working with risk management to produce affidavits that the employee notice was distributed. (City of Milpitas shall be responsible for the distribution costs of the employee notice.

MPN Application. MAAM will prepare, on behalf of the City of Milpitas, the MPN application to be filed with the Administrative Director of the California Division of Workers' Compensation, and all attachments, required for the filing for a validly organized medical provider network pursuant to Labor Code Section 4616 et seq. MAAM also agrees to prepare and file on behalf of City of Milpitas up to one amendment of the MPN application per each 12 months at no cost.

Website access. MAAM has constructed www.wellcomp.net to enhance the usability and attractiveness of WellComp for injured workers, the City of Milpitas and claims examiners. *Please see the attached MPN book for a preview of the website.*

Data compilation and reporting. MAAM will provide reports on all data (including provider usage rates, saving rates, etc) collected in the ordinary course of business at the reasonably request of the City of Milpitas. The goal of this data is assist risk management understanding of how their MPN is reducing costs and increasing control.

Education and training. MAAM will help train the City of Milpitas risk management on how to utilize the medical provider network, including training activities such as providing educational materials, on-site trainings, and teleconferences.

Information services. MAAM will publicize and monitor a toll free telephone number that is available to injured workers, who may call to learn more about the WellComp MPN.

Patient services. MAAM will coordinate patient services with the City of Milpitas and claims examiners. Consultant shall be responsible for developing and distributing materials, such as a provider directory, that may reasonably be requested by injured workers.

Medical provider services. MAAM will be responsible for communication with medical providers within the MPN.

On-going administration. MAAM will perform such acts as required for the on-going administration of the MPN, including any such acts as may reasonably be requested by City of Milpitas and as are required by statute or regulation.

SCRMA and MAAM designed the WellComp Network so that direct savings negotiated in our proprietary contracts offset the fees associated with network access. We have negotiated 4% below fee schedule to be allocated to direct savings for our clients.

Because we want to attract and retain the best medical providers in WellComp, our maximum discount below fee schedule is 8%.

For an in-depth review of our MPN, please see your individual attachment.

18. Fraud and Abuse Detection: Special Investigation Unit (SIU):

One of the services that SCRMA provides which we believe sets us apart from other third-party administrators is our success in identifying and fighting fraudulent claims. SCRMA strongly believes that education is the key element in order to identify and fight fraudulent claims. Although self-insured accounts are not regulated by Insurance Code Section 2698.40 through 2698.5 (mandatory implementation and requirements of a special investigative unit within an insurance company), SCRMA has implemented all the requirements set forth by the California Department of Insurance to be certified as a Special Investigative Unit. Since we do not employ licensed investigators, we use the services of an outside investigator to conduct monthly training seminars with our entire claims staff. These seminars not only address the various aspects such as applicant, medical and attorney fraud issues, but also keep our staff apprised of the recent indictments, arrests and convictions in the workers' compensation field. It should be noted that this training is at the expense of SCRMA. Furthermore, in order to increase the overall effectiveness of our fraud fighting efforts, SCRMA's account managers can individually conduct training seminars for our clients based on our training, or City of Milpitas can contract with a private investigator to assist the City of Milpitas in fraud training seminars.

When a claims examiner, account manager or client detect a "red flag" aspect, whether it be a questionable claim, abusive medical billing, an applicant's attorney's mill operation, etc., the SIU department is consulted. We encourage these individuals to consult with the SIU department even if they just suspect fraud but do not have solid evidence. Working in close association with an outside licensed investigator utilizing their education and experience, we will determine if the case merits additional investigation or warrants immediate referral to the State of California Department of Insurance, Fraud Unit. Please refer to the Appendix, Section G, for a recent copy of SCRMA's SIU Update.

SCRMA also provides our clients remote access to their claims data. With a modem and security clearance, remote users can access SCRMA's Claims Management Information System to view a claim status. In addition, our clients are able to report injuries directly online through our website, www.scrma.com.

19. Investigation

SCRMA has successfully incorporated the use of Index reports in our routine claims handling process. A report is made on every lost time case and, in some instances, a medical-only claim. Furthermore, follow-up re-Indexing is completed on a claim by claim basis throughout the life of the claim. Access to the Index Bureau system is incorporated within our fee quotation.

20. Compensability

As previously mentioned in our Response, within 24 hours of receipt of notice of injury, whether it be from the employer or another source, in those cases involving ongoing temporary disability or unique issues, SCRMA will contact the injured employee by telephone and complete a preliminary investigation, which includes contact with the employer and doctor.

Initial investigation of questionable claims and serious claims will be conducted by SCRMA's claims examiner at the time of initial contact with the injured employee by telephone. However, SCRMA does not employ licensed investigators and is not affiliated with, nor does it own, subsidiary corporations engaged in providing investigative services to a self-insured employer. Therefore, in special situations where a detailed investigation is necessary, such as where an AOE/COE investigation is the basis for a substantial denial, we recommend utilizing licensed investigators.

SB 899 requires the employer provide payment of medical treatment up to \$10,000.00 for claims being considered for compensability. During the investigation period, SCRMA has system monitors in place for tracking delayed claims and processing them through our normal medical utilization review and bill review while providing treatment up to the \$10,000.00 payment cap. Claims coded "delayed" are captured, and only certain medical-legal codes are allowed after the \$10,000.00 treatment cap has been paid.

Any questionable claims will be referred and round-tabled with the account manager. While there is not a definitive list of the types of cases that are delayed for investigation, our policy is to attempt to make a determination of compensability within the 14-day period from the date of knowledge. If our investigation cannot be completed within that time frame and if additional medical or factual information is needed, the claim will be delayed. It is important, however, to note that before the delay letter goes out, the claims examiner will make telephonic or personal contact with the injured employee. It

is SCRMA's policy to investigate all questionable cases and to send formal delay letters if in fact we do not have sufficient information to make a decision at the time of the 14-day period.

SCRMA applies a "Fast Track" approach to questionable claims. Although the legislative changes in 1993 greatly reduced "garden variety" stress claims and afforded employers with some codified defenses, we believe there still exists the questionable claim for which our Fast Track approach is still a viable and unique way of curtailing such claims and exercising cost containment on the medical and legal costs incurred. Identification of a questionable claim which would require the Fast Track approach can be made by the claims examiner, account manager or the employer. For a more detailed explanation of the step-by-step process involved in our Fast Track approach, please refer to the Appendix, Section C.

We wish to emphasize that no decisions are made without close coordination and discussion with the City of Milpitas. No one at SCRMA has settlement authority nor will we make decisions regarding delays or denials of questionable cases in a vacuum. The City of Milpitas will be contacted on these issues.

21. Provision of Benefits

Benefit payments are made from a trust account established by the City of Milpitas, with SCRMA personnel as co-signors. Payment of all benefits is approved by the claims examiner and/or account manager, and medical and hospitalization costs are paid from the file after medical bill review, utilization review and preferred provider networks have been utilized. No bills or lost time benefits are paid without proper written or verbal documentation.

Lost time and permanent disability benefits are to be paid in accordance with State requirements as to amount and timing.

W-2 Year-End Information: Our system has the capability to produce a running total of all non-taxable workers' compensation benefits paid to injured employees during a particular calendar year. Additionally, SCRMA generates a benefit notice which shows the exact amount of tax-free benefit payments the employee has received for the entire period of disability. At year-end, the City of Milpitas can summarize these findings via letter or simply refer the employee to the information he has previously received from SCRMA. We also have the computer capability to generate a special year-end benefit payment report for W-2 purposes.

22. Initial Indemnity Payment

Please refer to the Provision of Benefits above regarding indemnity payment or voucher to be issued. It is SCRMA's practice to provide properly documented

disability to the injured worker within 14 days of the first day of disability. It is also our practice to include the self-imposed increase in accordance with Labor Code Section 4650, if applicable.

23. Subsequent Indemnity Payments

It is SCRMA's practice to verify the need for subsequent indemnity payments with the treating physician and issue the payments in compliance with Labor Code Section 4651.

24. Return to Work

At SCRMA, we like to refer to temporary limited duty as transitional duty. We believe the intent of transitional duty is to transition an employee who has temporary restrictions into a fully recovered status, able to perform their usual and customary duties. The first step in ensuring the success of transitional duty is to perform on-site routine visits to the regular treating facilities identified by the City of Milpitas to ensure that those facilities clearly understand the City of Milpitas's temporary modified duty guidelines before an injury ever occurs. Furthermore, upon initial contact after receipt of injury, if the injured worker has been taken completely off work, we reiterate to the physician the availability of temporary modified duty. For those cases that involve a pre-designated treating physician or a transfer to an employee-selected physician, SCRMA recommends the use of an employee-selected/pre-designated treating physician instructions and agreement to be sent to the physician. A sample of this form can be found in the Appendix, Section C.

In an effort to reduce the amount of lost work days and compensable temporary disability, SCRMA works closely with the proactive employer in implementing a temporary modified duty agreement. The basic premise of the program is that employees of the employer, when released to modified duty, are offered temporary modified duty in a written agreement. The agreement is signed by the employee and the employer's management. The employee voluntarily has the right not to accept the temporary modified duty position; however, should that decision be made, they are told at the time of the contract that they will not be paid workers' compensation benefits or salary continuation, if applicable, and they will be off on their own sick or vacation leave.

Integral to this program is the internal marketing within the City of Milpitas to convince all departments that the workers' compensation department was a source of "free labor," thus encouraging all departments to welcome temporary modified assignments within their department.

The overall result of this program is a significant decrease in the amount of employees who require full temporary total disability benefits following an injury. In addition, it fosters an overall understanding within the City of Milpitas of their

self-insured workers' compensation and how the City of Milpitas can mitigate those costs. *A sample of a modified duty agreement can be found in the Appendix, Section C. Please refer to the Appendix, Section H, for sample return to work program.*

25. Transportation Expense:

It is SCRMA's practice to reimburse the injured worker for their medical mileage in accordance with Labor Code 4600 upon receipt of a properly documented claim for reimbursement. Mileage is paid in advance for arrangements to a medical evaluation arranged by SCRMA.

26. Permanent Disability:

It is SCRMA's practice to review, compute, recommend and authorize payment of permanent disability benefits due to an injured employee, whether paid voluntarily or under decision and orders of Findings and Award of the Workers' Compensation Appeals Board, Insurance Commission or judicial body within the State of California.

SCRMA's claim staff has undergone intense training on the new permanent disability rating process with particular emphasis on validating the Whole Person Impairment (WPI) rating provided by the reporting physician. These dramatic changes to the calculation of permanent disability are also incorporated into SCRMA's reserving philosophy to ensure that our clients are realizing the intended effect of the legislative overhaul of the permanent disability system.

In the case of non-represented claims, it is SCRMA's practice to explain and assist injured employees in completing the necessary forms to obtain a permanent disability rating. In addition, following our determination of the nature and extent of permanent disability, we explain to the injured employee how we derived our conclusion as to the extent of permanent disability. As you can see from our outline for qualifications of our staff, our examiners have had training in permanent disability rating. For difficult rating problems, we are able to outsource for a consultative rating to assist in settlement. Also, consultative ratings from the Disability Evaluation Unit are utilized on non-represented injured workers.

27. Litigated Cases:

Initial investigation of questionable claims and serious claims will be conducted by SCRMA's claims examiners and/or account manager at the time of initial contact with the injured employee by telephone. However, SCRMA does not employ licensed investigators and is not affiliated with, nor does it own, subsidiary corporations engaged in providing investigative services to a self-insured employer. Therefore, in special situations where a detailed investigation is

necessary, such as where an AOE/COE investigation is the basis for a substantial denial, we recommend utilizing licensed investigators who have been approved by the City of Milpitas.

Litigation Handled In-House: In the event an employee retains an attorney, SCRMA will discuss with the City of Milpitas whether the case should be handled in-house by the SCRMA claims examiner or referred to a City of Milpitas-identified defense counsel. In cases involving AOE/COE, apportionment or multiple ancillary issues such as concurrent filings under EEOC, or the ADA, or a L.C. 132(a) filing, or in the case of a subrogation action involving the filing of a Summons and Complaint or a Complaint in Intervention, SCRMA will recommend that the case be referred to a City of Milpitas-appointed defense counsel. Furthermore, there may be instances where a recommendation is made to simply refer to the City of Milpitas-appointed workers' compensation defense counsel for the deposition of the employee only.

In the event that the City of Milpitas and SCRMA determine that the case warrants referral to a workers' compensation defense attorney, SCRMA will, where appropriate:

- a. Set up all medical/legal evaluations.
- b. Arrange for outside investigation including sub rosa, if necessary.
- c. Serve medical and personnel records with all interested parties to avoid unnecessary subpoena and photocopy costs.
- d. Arrange for agreed medical examinations or qualified medical evaluations where indicated.
- e. Arrange for consultative permanent disability evaluations where appropriate.
- f. Initiate and arrange round-table meetings with the workers' compensation defense attorney, City of Milpitas SCRMA to establish a reasonable plan of action and strategy.

SCRMA will preserve the City of Milpitas's interests and supervise its legal obligations under the Labor Code. In the case of a subrogation issue, we will identify negligent third parties and take whatever steps are necessary in conjunction with legal counsel to preserve the subrogation rights on individual claims.

Where appropriate, SCRMA acts as the City of Milpitas's representative at workers' compensation hearings upon the recommendation of the workers' compensation defense attorney or the client. In cases involving an unrepresented injured worker, the account manager or claims examiner will actually make the appearance on behalf of the City of Milpitas. We must emphasize that a decision for a case to be handled in-house by SCRMA's claims examiners is made in conjunction with the client, taking into consideration the specific issues and dispute on the claim.

Referral to Outside Defense Counsel: A determination to refer a City of Milpitas case to outside legal counsel is made jointly with the City of Milpitas. The decision is made on a claim-by-claim basis. If referral to outside counsel is the decided action, then SCRMA prepares the file for transmission to the defense attorney with a detailed cover letter outlining the plan of action, as well as a phone call outlining the issues and discovery completed to date. A sample template Litigation Referral and sample Litigation Referral letters can be found in the Appendix, Section C, of which the City of Milpitas receives a copy. It should also be noted that at times SCRMA will recommend that a case that is not yet litigated be referred to the workers' compensation defense attorney for his or her analysis and recommendations. Often, there are issues on a workers' compensation claim for which the City of Milpitas and SCRMA can benefit from an analysis or the recommendations of defense counsel to ensure that the case is being worked up properly and from every angle. This type of decision would be made, as are all decisions, directly with the approval of the City of Milpitas risk management.

There are certain types of claims which SCRMA would recommend be immediately referred to outside defense counsel. Specifically, claims that are filed in the old style "blind application" involving a disputed injury should be immediately referred to outside counsel in order to obtain the employee's deposition and possibly have outside counsel initiate and complete the initial City of Milpitas-level investigation to preserve attorney/client privileges on the investigation. In addition, there may be instances as indicated above of cases where there is no attorney involvement on the employee's side but where the City of Milpitas and SCRMA would benefit from immediate legal referral for analysis and recommendation.

Managing Outside Legal Counsel: SCRMA controls legal costs by actually controlling the defense attorney and directing them with regard to defense activities. We believe that the claims examiner's job is the overall management of the claim including when it has been referred to defense counsel. The account manager carefully audits incoming defense attorney bills to gauge the reasonableness of legal fees, the experience level of the attorney working on the case, utilization of paralegals, and unacceptable billing practices such as block billing. We do not believe it is appropriate for the administrator to charge extra fees for the managing of the legal file, since this is clearly one of the

administrative duties contracted for. Furthermore, SCRMA is not hesitant to demand a high level of quality work product from the workers' compensation defense attorney.

SCRMA suggests that the risk management of the City of Milpitas be notified of all hearings and trials via a calendar developed by SCRMA. This calendar is currently used by our office to give advance notice to the client enabling them to have sufficient notice to attend if they wish. If witnesses are needed at the time of trial, claims staff will also call in advance to arrange their attendance. A sample of the calendar can be found in the Appendix, Section C.

It is SCRMA's practice to retain a panel of attorneys approved by our clients who are specialists in the defense of workers' compensation litigation for defense of cases before the Workers' Compensation Appeals Board. At SCRMA, we believe that workers' compensation defense is a team effort; therefore, we believe it is extremely important that the City of Milpitas identify and designate a specific attorney or law firm who would be responsible for City of Milpitas's litigated claims. As indicated above, SCRMA will monitor all legal cases from the time an Application is filed with the Appeals Board, until the final disposition is rendered. We believe that the claims examiner's job is the overall management of the claim, including when it has been referred to the defense counsel.

28. Settlements

At SCRMA, neither claims examiners, the account managers, the Vice Presidents nor the President retain settlement authority for our clients. Rather, our philosophy is that any claim involving settlement must be round-tabled and authority obtained directly from the client. SCRMA's job is to provide a rational analysis of the pros and cons of settlement versus litigation of a claim.

The decision to take a case to trial rather than settling must be made after an in-depth analysis on a claim-by-claim basis. Quite often in a self-insured program, there are ancillary issues to the workers' compensation claim that must be considered when making the ultimate decision to litigate or settle. The ultimate decision is going to be City of Milpitas's. But as indicated above, SCRMA will provide the City of Milpitas with a detailed analysis of the pros and cons of both decisions so that an educated, well-reasoned decision can be made by the City of Milpitas.

29. Subrogation

The identification of potential subrogation against a negligent third party is instituted at claims inception. However, no notice or action is taken against the negligent third party without initial discussion with the City of Milpitas.

Rather than a separate subrogation unit, at the inception of the claim, each examiner addresses the issue of subrogation. *This is demonstrated by the "Reserve/Diary Review Notepad Template" in Appendix, Section C.* Criteria used to identify subrogation are as follows:

- a. Injury outside the employer's work place.
- b. Automobile accident.
- c. Accident involving machinery.
- d. Accident where the act of someone other than a co-employee may have caused the injury.

Once the third party is identified and the City of Milpitas directs, a notice of lien is sent. If the matter cannot be resolved within one year from the date of injury, we would discuss with the City of Milpitas the filing of a Summons and Complaint or intervening to protect the City of Milpitas's subrogation rights. If the third party is identified as a public entity, notice needs to be given within 100 days of the date of injury.

On all cases where we identify a negligent third party and the City of Milpitas has approved SCRMA to move forward, we will endeavor to recover money without outside counsel to maximize returns to the City of Milpitas. In those situations where we recommend City of Milpitas intervene or file a Summons and Complaint, we will work with the City of Milpitas authorized attorneys and recommend either contingency based fees or hourly rates.

30. Rehabilitation Management/Supplemental Job Displacement:

For injuries prior to January 1, 2004, SCRMA continues to process all necessary reports to the Rehabilitation Unit and file within the time frame specified by the Labor Code. All rehabilitation programs are monitored on an ongoing basis by claims examiners who, along with the client, determine the need for a vocational rehabilitation expert. As with all other outside service firms, SCRMA encourages the City of Milpitas to identify one or two specific vocational rehabilitation counselors who provide a consistent, quality, professional and cost-effective service to the City of Milpitas.

They should be well-versed in the Americans with Disabilities Act, interactive accommodations, and special issues facing California employers today. The service vendor is utilized when the need is identified for a formal job analysis; essential function job analysis, ergonomic evaluations, a 90-QRR intervention, or ADA coordination.

For injuries on or after January 1, 2004, SCRMA will coordinate with the client offers of permanent modified or alternative work within 30 days of the last payment of temporary disability. Should the City of Milpitas find after exhaustive research that it cannot offer permanent modified or alternative work, SCRMA will administer the Supplemental Job Displacement benefit in accordance with regulations, including the issuance of timely notices. In addition, SCRMA will work with the City of Milpitas to assist in the coordination of experts in complying with ADA/AB 2222 interactive accommodations requirements. Such experts as rehabilitation counselors who have expertise in ADA/AB 2222 compliance will be used in this process.

Please note that SCRMA does not employ qualified rehabilitation representatives. Therefore, in those instances where a vocational rehabilitation counselor is required or recommended, SCRMA out-sources this service.

31. Claim Reconciliation

SCRMA maintains both computer documentation and physical documentation on a claims file. All activity performed by any staff member at SCRMA on a claims file is documented and is in the computer notepad system. All financial activity is documented into the computer system as well. A hard copy of the paycard for indemnity payments is kept in addition to the computer system's documentation. All documentation and rationale for reserve changes and appropriate courses of action on claims files are documented in the computer claims file notes.

32. Excess Insurance

SCRMA is familiar with the unique reporting requirements of excess insurance carriers. Most of our clients have a different excess carrier for each policy year with different self-insurance retentions for each year. With that in mind, every claims examiner and account manager has readily available a detailed outline by account by policy year of the excess insurance carrier, their reporting requirements and the self-insurance retention. It is the claims examiner's responsibility to initially identify cases that may require reporting to the excess carrier. The file is round-tabled with the claims examiner's account manager and a decision is made as to whether or not the file constitutes the necessity for reporting to the excess carrier. Additionally, once reported, all follow-up and correspondence with the excess carrier, including follow-up procedures for loss recovery, are initiated and executed by the claims examiner, with the overall management for the whole program by the account manager to ensure proper reporting.

It is SCRMA's policy to provide large loss reports and maintain updated reporting to excess insurance every 90 days until the final disposition of the claim.

33. Award Payment

As indicated previously, it is SCRMA's practice to review, compute, recommend and authorize payment of temporary disability and permanent disability due to an injured employee, whether paid voluntarily or under a decision and orders or Findings & Award by the Workers' Compensation Appeals Board, Insurance Commission or a judicial body within the State of California. It is SCRMA's practice to do so within the time constraints in order to avoid incurring penalties or interest.

34. Penalties

By close monitoring of caseloads, SCRMA is able to effectively prevent incurring self-imposed increases for non-compliance with California regulations. If a self-imposed increase for late payment of benefits does occur, SCRMA determines and documents the circumstance for the late payment. On the self-imposed increases that are clearly due to SCRMA's actions, reimbursement is paid directly to City of Milpitas on a quarterly basis.

35. Case Closure

It is SCRMA's practice to close all indemnity claims when all issues have been resolved and payments have been made. Medical-only cases are closed upon notification that they have discharged from care.

The future medical award cases are monitored for the appropriateness of the medical care requested. Reserves are set forth as previously discussed based on the factual evidence in the case.

36. Loss Runs

Samples of a cross-section of reports generated from our Claim Processing System, as well as specialized reports and statistical summaries developed using data from our Claim Processing System, can be found in the Appendix, Section E. This sampling of claims reports is incorporated within our flat fee quote.

SCRMA has the ability to provide online view-only access to the Claim Processing System. In addition, all SCRMA claims personnel have the ability to send and receive e-mail messages. Furthermore, when appropriate, claims personnel can cut and paste the contents of an e-mail message into the workers' compensation computerized claims file.

37. Banking Arrangements: SCRMA remains open and flexible to implement the City's desired funding mechanism for claim payments. We can assist the City in establishing a bank account, or we can work with the City's desired banking institution. We have experience with programs that have established impress levels, Zero balance accounts (ZBA's), and account funding via wire-transfer. For

a program the size of the City, we would recommend that you explore the "cash management" services offered by many of the major banking institutions. This will enable the City to work effectively and efficiently with a ZBA with funding via wire-transfer. The "Cash Management" services will also enable SCRMA to implement "positive pay" with the banking institution, which offers a greater level of fraud protection and enables the City to implement enhanced bank reconciliation services with the Banking institutions. SCRMA can assist the City in exploring "Cash Management" services.

38. Complaints: We train our claims examiners that the initial response to an injured workers' complaint is to listen, understand, and validate. Examiners are further trained to diary follow up. This approach underlines our philosophy that the most often best result for a claim is to get the employee back to work. If a complaint is not resolved successfully by the examiner, our account managers, each who manages a maximum of five examiners, quickly gets involved. Especially with the advent of utilization review, injured workers may still remain unsatisfied. This is especially prominent with our city, county, and special district clients who have police and fire departments. Our account managers are trained that if an injured worker's complaints rise to the level of creating physical or non-physical (e.g. reputation) damage, then the issue is to be brought to a senior executive who will then inform and meet with our clients.
39. Loss Control: SCRMA does not provide training on safety and loss control at this time. However, we have been in the California workers' compensation market since 1988. As a result, we are able to assist the City in evaluating potential candidates for this service.

Exhibit B: Compensation Schedule

WORKERS' COMPENSATION CLAIMS ESTIMATED ADMINISTRATIVE COSTS

<u>SERVICE</u>	<u>IMPLEMENTATION FEE</u>	<u>FIRST YEAR</u> 11/01/05- 6/30/2006	<u>SECOND YEAR</u> 07/01/2006- 6/30/2007	<u>THIRD YEAR</u> 07/01/07- 6/30/08
Claims Administration		\$109,000.00	Not to exceed 8% from previous year	Not to exceed 8% from previous year
Data Storage/Maintenance	Included in claims fee			
Standard Reporting/Distribution	Included in claims fee			
Ad Hoc Reporting Access for 2 Users	Included in claims fee			
Online Access				
Software/Support for 2 Users	\$600 per year, per user			
Claims Edit/Diary Entries for 2 Users	Included in online access fee			
Medical Management Review (Utilization review)	None	5.0% of medical charges		
PPO Re-Pricing	None	\$6 per bill; 12.5 % of savings, less duplicates		
Fee Schedule Review	None	\$6 per bill; 12.5 % of savings, less duplicates		
Negotiated Discount	None			
Litigation				
Coordination/Representative	To be chosen by the City of Milpitas			
Physician Consultation/Review	Average range: \$150 to \$200 per hour			
Loss Control Services	To be chosen by the City of Milpitas and SCRMA			
Physical Transfer of Files	Included in claims fee			
Data Conversion	Not to exceed \$10,000.00. One time pass through fee to claims software vendor, Renaissance.			
Other Fees:				
Medical Provider Network	One time \$1,200 application fee	\$48 per claim for life of claim. SCRMA passes back the first 4% of savings below fee schedule. Please see appendix on projected savings for City.		

Please refer to the 2003-2004 Public Self-Insurers Annual Reports in Appendix B to assist with your pricing estimates. The City intends for the TPA to take over all claims as of September 30, 2005. The City also expects the closed claims with associated transaction history from 07/01/1995-09/30/05 periods to be included in the centralized database and included in system provided management reports. Where fees cannot be per claim based, please provide a range estimate based on your California experience. Please provide detailed assumptions.